



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,351	03/27/2000	Sreenivasa Rao Damarla	3900-003	3606

7590

02/05/2002

Luke A Kilyk Esq
Kilyk & Bowersox PLLC
3603 E Chain Bridge Road
Fairfax, VA 22030

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
--------------------	-------------	-----------------------	------------------

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 5

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 11/20/01
☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12, 14-19, 23 & 24 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-12, 14-19, 23 & 24 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
☐ Interview Summary, PTO-413
☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
☒ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

Receipt is acknowledged of Amendment of 11/30/01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12, 14-19, 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record of "substantially" referring both to water, and undefined organic solvents, is maintained. See, for instance P. 2, line 33. 2-5% water permits of stability; line 1, p.3, shown 15% water is substantially no water, in terms of stability. Reading page 5, use see rather than a definition a statement of preference-substantially is this over the preferred 2% how much, are don't know, but at page 3, 15% provides stable compositions. Quantification is requested. Further classification is required as to storage stable – if applicant were to insert maximum water as a % of total formulation, and the claim 9 material in an independent claim, such as 3, the rejection would be overcome a Examiner also suggests combings such a claim with the subject matter of each of claims 10, 11 and 12. The "organic solvents" are also undefined – vegetable oil is one.

The Butler 5352697 patent describes storage stable azadirachtin differently form applicant; thus, the term, absent quantification, such as suggested, is open to wide interpretation – Butler used vegetable oil (col. 3, lines 52-64), and : 2-50% surfactant , non ionic (col. 5, lines 15-32) Butler is able to stabilize as high as 85% azadirachtin (col.

Art Unit: 1616

6, lines 30-33) or 1-5%, with vegetable oil low as 1% and 15% surfactant (col. 6, lines 18-25).

Claims 1-3, 5, 14, 17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kleeberg-EP 0579624.

The rejection of record is maintained.

Claims 1-7, 14-17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dimetry et al '97.

The rejection of record is maintained.

Claims 1-5, 14, 15, 17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Schauer '83.

The rejection of record is maintained.

Claims 1-12, 14-19, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson-4556562 in view of Kleeberg et al '94, Dimetry et al '97 and Ujihara-6034128.

The rejection of record is maintained.

Applicant's arguments filed on 11/20/01 have been fully considered but they are not persuasive. Applicants arguments are predicated on the lacks of water, unsubstantiated as to interpretability in the claims, as indicated above, in continued 112 2nd.

Rejection, and , likewise with a presumption of limited understanding of organic solvents", to, presumably, exclude the vegetable oils, but; still, the term is undefined, and subject to the substantially issue". Applicant also sees the process of forming the

composition as a basis for distinguishing over, the prior art; Examiner does not – a composition is claimed, the method not seen as critical.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 703-308-2412. The examiner can normally be reached on Tuesday to Friday from 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4242.

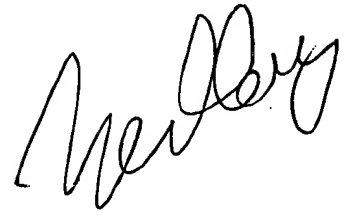
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Application/Control Number: 09/836,351
Art Unit: 1616

Page 5

Levy/LR

January 24, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

NEIL S. LEVY
PRIMARY EXAMINER